

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)
Against:)

EARL MELVIN SIMMONS, M.D.)

File No. D1-1994-36142

Physician's and Surgeon's)
Certificate No. G 43704)

Respondent)
_____)

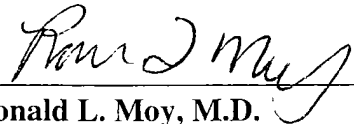
DECISION

The attached **Stipulated Surrender of License Pursuant to Section 822** is hereby adopted as the Decision and Order of the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on ~~June 27, 2006~~.

IT IS SO ORDERED June 20, 2006.

MEDICAL BOARD OF CALIFORNIA

By: 
Ronald L. Moy, M.D.
Chair
Panel B
Division of Medical Quality

1 BILL LOCKYER, Attorney General
of the State of California
2 STEVEN H. ZEIGEN, State Bar No. 60225
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
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7 Attorneys for Complainant
8

9 **BEFORE THE**
10 **DIVISION OF MEDICAL QUALITY**
MEDICAL BOARD OF CALIFORNIA
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation and Petition to
Revoke Probation Against:

13 EARL M. SIMMONS, M.D.
14 267 North El Camino Real, Suite I
Encinitas, CA 92024

15 Physician's and Surgeon's Certificate
16 No. G 43704

17 Respondent.
18

Case Nos. D1-1994-36142
and 19-2004-163215

OAH No. L-2006010999

STIPULATED SURRENDER OF
LICENSE PURSUANT TO
SECTION 822

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
21 proceeding that the following matters are true:

22 **PARTIES**

23 1. David T. Thornton ("Complainant"), is the Executive Director of the
24 Medical Board of California. He brought this action solely in his official capacity and is
25 represented in this matter by Bill Lockyer, Attorney General of the State of California, by Steven
26 H. Zeigen, Deputy Attorney General.

27 2. EARL M. SIMMONS, M.D., is representing himself in this proceeding
28 and has chosen not to exercise his right to be represented by counsel.

1 3. On or about October 24, 1980, the Medical Board of California issued
2 Physician's and Surgeon's Certificate No. G 43704 to EARL M. SIMMONS, M.D. (Respondent.)
3 The Certificate was in full force and effect at all times relevant to the charges brought in
4 Accusation and Petition to Revoke Probation Nos. D1-1994-36142 and 19-2004-163215, but
5 expired on February 28, 2006, and has not been renewed.

6 **JURISDICTION**

7 4. Accusation and Petition to Revoke Probation Nos. D1-1994-36142 and
8 19-2004-163215 was filed before the Division of Medical Quality ("Division") for the Medical
9 Board of California, Department of Consumer Affairs, and is currently pending against
10 respondent. The Accusation and Petition to Revoke Probation and all other statutorily required
11 documents were properly served on respondent on or about June 30, 2005. Respondent timely
12 filed his Notice of Defense contesting the Accusation and Petition to Revoke Probation. A copy
13 of Accusation and Petition to Revoke Probation Nos. D1-1994-36142 and 19-2004-163215 is
14 attached as Exhibit A and incorporated herein by reference.

15 **ADVISEMENT AND WAIVERS**

16 5. Respondent has carefully read, and understands the charges and allegations
17 in Accusation and Petition to Revoke Probation Nos. D1-1994-36142 and 19-2004-163215.
18 Respondent also has carefully read and understands the effects of this Stipulated Surrender of
19 License and Order.

20 6. Respondent is fully aware of his legal rights in this matter, including the
21 right to a hearing on the charges and allegations in the Accusation and Petition to Revoke
22 Probation; the right to be represented by counsel at his own expense; the right to confront and
23 cross-examine the witnesses against him; the right to present evidence and to testify on his own
24 behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the
25 production of documents; the right to reconsideration and court review of an adverse decision;
26 and all other rights accorded by the California Administrative Procedure Act and other applicable
27 laws.

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7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent understands that the charges and allegations in Accusation and Petition to Revoke Probation Nos. D1-1994-36142 and 19-2004-163215, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate No. G 43704.

9. For purposes of resolving Accusation and Petition to Revoke Probation Nos. D1-1994-36142 and 19-2004-163215, respondent acknowledges that he currently suffers from metastatic prostate cancer which has affected his ability to practice medicine safely and, as a result, is impaired as defined by section 822. Accordingly, in conformity with section 822(b), respondent agrees to surrender his license to practice medicine.

10. Respondent understands that by signing this stipulation he enables the Division to issue an order accepting the surrender of his Physician's and Surgeon's Certificate without further process.

CONTINGENCY

11. This stipulation shall be subject to approval by the Division of Medical Quality. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Division regarding this stipulation and surrender, without notice to or participation by respondent. By signing the stipulation, respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Division considers and acts upon it. If the Division fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Division shall not be disqualified from further action by having considered this matter.

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1 psychological condition, or anything else affecting respondent's practice of medicine.

2 Respondent shall comply with Program recommendations.

3 At the completion of any additional educational or clinical training, respondent
4 shall submit to and pass an examination. The Program's determination whether or not
5 respondent passed the examination or successfully completed the Program shall be binding.

6 Respondent shall successfully complete the Program not later than six months
7 after respondent's initial enrollment unless the Division or its designee agrees in writing to a later
8 time for completion.

9 2. **WRITTEN EXAM**

10 During the 12 months immediately preceding the Petition for Reinstatement,
11 Respondent shall take and pass the Special Purpose Examination (SPEX) or equivalent
12 examination.

13 3. **MEDICAL EVALUATION**

14 During the 90 days immediately preceding the Petition for Reinstatement,
15 Respondent shall undergo a medical evaluation by a board-certified physician currently licensed
16 by and in good standing with the Medical Board of California who shall furnish a detailed
17 medical report stating whether Respondent is physically capable of safely resuming the practice
18 of medicine in California.

19 4. Respondent shall lose all rights and privileges as a Physician's and
20 Surgeon's in California as of the effective date of the Division's Decision and Order.

21 5. Respondent shall cause to be delivered to the Division both his wall
22 certificate and pocket license certificate on or before the effective date of the Decision and Order.


23 6. Respondent fully understands and agrees that if he ever files an application
24 for licensure or a petition for reinstatement in the State of California, the Division shall treat it as
25 a petition for reinstatement. Respondent must comply with all the laws, regulations and
26 procedures for reinstatement of a revoked license in effect at the time the petition is filed. In
27 addition, Respondent's certificate may not be reinstated unless he has met all the conditions set
28 forth above and until the Division has received competent evidence of the absence or control of

1 the condition which caused the surrender and until it is satisfied that with due regard for the
2 public health and safety respondent's right to practice his profession may be safely reinstated.
3 If respondent ever petitions for reinstatement of Physician's and Surgeon's Certificate No.
4 G 43704 all of the charges and allegations contained in Accusation and Petition to Revoke
5 Probation Nos. D1-1994-36142 and 19-2004-163215 shall be deemed to be true and correct by
6 ~~respondent when~~ the Division determines whether to grant or deny the petition.

7 ACCEPTANCE

8 I have carefully read the Stipulated Surrender of License and Order. I understand
9 the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No.
10 G 43704. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly,
11 and intelligently, and agree to be bound by the Decision and Order of the Division.

12 DATED: 5/4/06.

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15 
16 EARL M. SIMMONS, M.D. (Respondent)
Respondent

17 ENDORSEMENT

18 The foregoing Stipulated Surrender of License and Order is hereby respectfully
19 submitted for consideration by the Division.

20 DATED: 5/4/06.

21
22 BILL LOCKYER, Attorney General
23 of the State of California

24 
25 STEVEN N. ZEIGEN
26 Deputy Attorney General

27 Attorneys for Complainant

Exhibit A

**Accusation and Petition to Revoke Probation No. D1-1994-36142 and
19-2004-163215**

BILL LOCKYER, Attorney General
of the State of California
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 30, 20 05
BY Allen Moore ANALYST

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation/Petition to
Revoke Probation Against:

EARL MELVIN SIMMONS, M.D.
267 North El Camino Real, Suite I
Encinitas, CA 92024

Physician's and Surgeon's
Certificate No. G 43704

Respondent.

Case No. D1-1994-36142

OAH No.

ACCUSATION AND PETITION TO
REVOKE PROBATION

Complainant alleges:

PARTIES

1. David T. Thornton (Complainant) brings this Accusation and Petition to Revoke Probation solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On or about October 24, 1980, the Medical Board of California issued Physician's and Surgeon's Certificate No. G 43704 to EARL MELVIN SIMMONS, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2006, unless renewed. On March 2, 2005, the Physician's and Surgeon's Certificate was suspended.

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1 conduct departs from the applicable standard of care, each departure constitutes a separate
2 and distinct breach of the standard of care.

3 "(d) Incompetence.

4 "(e) The commission of any act involving dishonesty or corruption which is
5 substantially related to the qualifications, functions, or duties of a physician and surgeon.

6 "(f) Any action or conduct which would have warranted the denial of a
7 certificate."

8 6. Section 2238 of the Code states:

9 "A violation of any federal statute or federal regulation or any of the statutes or
10 regulations of this state regulating dangerous drugs or controlled substances constitutes
11 unprofessional conduct."

12 7. Section 2239 of the Code states:

13 "(a) The use or prescribing for or administering to himself or herself, of any
14 controlled substance; or the use of any of the dangerous drugs specified in Section 4022,
15 or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or
16 injurious to the licensee, or to any other person or to the public, or to the extent that such
17 use impairs the ability of the licensee to practice medicine safely or more than one
18 misdemeanor or any felony involving the use, consumption, or self-administration of any
19 of the substances referred to in this section, or any combination thereof, constitutes
20 unprofessional conduct. The record of the conviction is conclusive evidence of such
21 unprofessional conduct.

22 "(b) A plea or verdict of guilty or a conviction following a plea of nolo
23 contendere is deemed to be a conviction within the meaning of this section. The Division
24 of Medical Quality may order discipline of the licensee in accordance with Section 2227
25 or the Division of Licensing may order the denial of the license when the time for appeal
26 has elapsed or the judgment of conviction has been affirmed on appeal or when an order
27 granting probation is made suspending imposition of sentence, irrespective of a
28 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such

1 person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting
2 aside the verdict of guilty, or dismissing the accusation, complaint, information, or
3 indictment."

4 8. Section 125.3 of the Code provides, in pertinent part, that the Division
5 may request the administrative law judge to direct a licensee found to have committed a
6 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
7 investigation and enforcement of the case.

8 9. Section 14124.12 of the Welfare and Institutions Code states, in pertinent
9 part:

10 "(a) Upon receipt of written notice from the Medical Board of California, the
11 Osteopathic Medical Board of California, or the Board of Dental Examiners of California,
12 that a licensee's license has been placed on probation as a result of a disciplinary action,
13 the department may not reimburse any Medi-Cal claim for the type of surgical service or
14 invasive procedure that gave rise to the probation, including any dental surgery or
15 invasive procedure, that was performed by the licensee on or after the effective date of
16 probation and until the termination of all probationary terms and conditions or until the
17 probationary period has ended, whichever occurs first. This section shall apply except in
18 any case in which the relevant licensing board determines that compelling circumstances
19 warrant the continued reimbursement during the probationary period of any Medi-Cal
20 claim, including any claim for dental services, as so described. In such a case, the
21 department shall continue to reimburse the licensee for all procedures, except for those
22 invasive or surgical procedures for which the licensee was placed on probation."

23 CAUSE FOR DISCIPLINE

24 (Violation of Drug Statutes)

25 10. Respondent is subject to disciplinary action under Code section 2238 in
26 that he prescribed controlled substances without having a DEA permit and violated 2239 in that
27 he prescribed a controlled substance for self-use. The circumstances are set forth below.

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1 11. In 1998, respondent's DEA controlled substance permit expired and was
2 not renewed. As a result, respondent was legally prohibited from prescribing controlled
3 substances after that time.

4 12. On or about September 17 or 18, 2004, respondent prescribed
5 phentermine, a controlled substance, for patient B.T., even though he did not have a DEA permit.

6 13. On or about October 26, 2004, respondent authorized a refill of
7 phentermine, a controlled substance, for patient B.T., even though he did not have a DEA permit.

8 14. On or about August 26, 2002, March 25, 2004, June 11, 2004, August 5,
9 2004 and September 30, 2004, respondent prescribed hydrocodone, a controlled substance, even
10 though he did not have a DEA permit. The prescriptions were written in respondent's name with
11 the indication they were for office use.

12 15. On or about April 23, 2004, respondent prescribed hydrocodone, a
13 controlled substance, for his own use even though he may not self-prescribe controlled
14 substances and even though he did not have a DEA permit.

15 16. On or about March 18, 2002, March 11, 2004, April 13, 2004, May 28,
16 2004, August 26, 2004 and November 22, 2004, respondent prescribed diazepam, a controlled
17 substance, even though he did not have a DEA permit. The prescriptions were written in
18 respondent's name with the indication they were for office use.

19 17. On or about September 22, 2003 and March 31, 2004, respondent
20 prescribed lorazepam, a controlled substance, even though he did not have a DEA permit. The
21 prescriptions were written in respondent's name with the indication they were for office use.

22 18. On or about January 1, 2002, September 5, 2002 and October 24, 2003,
23 respondent prescribed hydrocodone, a controlled substance, for his wife, even though he did not
24 have a DEA permit.

25 19. On or about September 17 2003, respondent prescribed diazepam, a
26 controlled substance, for his wife, even though he did not have a DEA permit.

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1 DISCIPLINE CONSIDERATIONS

2 27. To determine the degree of discipline, if any, to be imposed on
3 Respondent, Complainant alleges that on or about October 25, 2004, in a prior disciplinary action
4 entitled In the Matter of the Accusation Against EARL MELVIN SIMMONS, M.D., before the
5 Medical Board of California, Case No. 10-1994-36142, respondent's license was revoked with
6 revocation stayed and three years probation imposed with various terms and conditions. That
7 decision is now final and is incorporated by reference as if fully set forth.

8 PRAYER

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein
10 alleged, and that following the hearing, the Division of Medical Quality issue a decision:

- 11 1. Revoking or suspending Physician's and Surgeon's Certificate No. G
12 43704, issued to EARL MELVIN SIMMONS, M.D.
- 13 2. Revoking EARL MELVIN SIMMONS, M.D.'s probation and imposing
14 the discipline that was stayed in Case No. 10-1994-36142 (*i.e.*, revocation of respondent's
15 Physician's and Surgeon's Certificate No. G 43704;
- 16 3. Revoking, suspending or denying approval of EARL MELVIN
17 SIMMONS, M.D.'s authority to supervise physician's assistants, pursuant to section 3527 of the
18 Code;
- 19 4. Ordering EARL MELVIN SIMMONS, M.D. to pay the Division of
20 Medical Quality the reasonable costs of the investigation and enforcement of this case, and, if
21 placed on probation, the costs of probation monitoring;
- 22 5. Taking such other and further action as deemed necessary and proper.

23 DATED: June 30, 2005


24 
25 DAVID T. THORNTON
26 Executive Director
27 Medical Board of California
28 Department of Consumer Affairs
State of California
Complainant

EXHIBIT A

DECISION AND ORDER

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)
EARL MELVIN SIMMONS, M.D.)
Physician's and Surgeon's)
Certificate #G-43704)
Respondent.)
_____)

Case No: 10-1994-36142

OAH No: L2004040421

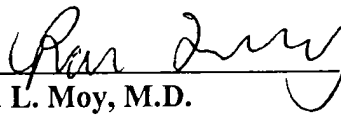
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision and Order by the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on October 25, 2004

IT IS SO ORDERED September 24, 2004

MEDICAL BOARD OF CALIFORNIA



Ronald L. Moy, M.D.
Panel B Chair
Division of Medical Quality

1 BILL LOCKYER, Attorney General
of the State of California
2 HEIDI R. WEISBAUM, State Bar No. 101489
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3 California Department of Justice
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Facsimile: (619) 645-2061

7 Attorneys for Complainant
8

9
10 **BEFORE THE**
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

13 EARL MELVIN SIMMONS, M.D.
267 N. El Camino Real, Suite 1
14 Encinitas, CA 92024

15 Physician's and Surgeon's Certificate
No. G43704

16 Respondent.
17

Case No. 10-1994-36142

OAH No. L2004040421

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
19 proceeding that the following matters are true:

20 PARTIES

21 1. Ron Joseph (Complainant) was the Executive Director of the Medical
22 Board of California, and brought this action solely in his official capacity. He has been
23 succeeded in that capacity by David T. Thornton, the Interim Executive Director of the Medical
24 Board of California, who is represented in this matter by Bill Lockyer, Attorney General of the
25 State of California, by Heidi R. Weisbaum, Deputy Attorney General.

26 2. Earl Melvin Simmons, M.D. (Respondent), is represented in this
27 proceeding by the Law Offices of Carlos F. Negrete, by attorney Carlos F. Negrete, whose
28 address is 27422 Calle Arroyo, San Juan Capistrano, California 92675-2747.

1 3. On or about October 24, 1980, the Medical Board of California issued
2 Physician's and Surgeon's Certificate No. G 43704 to Earl Melvin Simmons, M.D. (Respondent).
3 The Certificate was in full force and effect at all times relevant to the charges brought in
4 Accusation No. 10-1994-36142, and will expire on February 28, 2006, unless renewed.

5 JURISDICTION

6 4. Accusation No. 10-1994-36142 was filed against Respondent on August
7 14, 1996, before the Division of Medical Quality (Division) for the Medical Board of California,
8 Department of Consumer Affairs. The Accusation was served on Respondent on August 14,
9 1996, and he filed a Notice of Defense on August 20, 1996. A First Amended Accusation was
10 filed against Respondent on April 15, 2002, and is currently pending against Respondent. The
11 First Amended Accusation and all other statutorily required documents were properly served on
12 Respondent on April 15, 2002. (A copy of Accusation No.10-1994-36142 is attached as Exhibit
13 A and incorporated herein by reference.)

14 ADVISEMENT AND WAIVERS

15 5. Respondent carefully read and fully discussed with his counsel the nature
16 of the charges and allegations in Accusation No. 10-1994-36142, and acknowledges that he
17 understands the charges and allegations. Respondent has also carefully read and fully discussed
18 with his counsel the effects of this Stipulated Settlement and Disciplinary Order, and
19 acknowledges that he understands the effects of this settlement.

20 6. Respondent is fully aware of his legal rights in this matter, including the
21 right to a hearing on the charges and allegations in Accusation No. 10-1994-36142, the right to
22 be represented by counsel at his own expense, the right to confront and cross-examine the
23 witnesses against him, the right to present evidence and to testify on his own behalf, the right to
24 the issuance of subpoenas to compel the attendance of witnesses and the production of
25 documents, the right to reconsideration and
26 court review of an adverse decision, and all other rights accorded by the California
27 Administrative Procedure Act and other applicable laws.

28 ///

1 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
2 each and every right set forth above.

3 CULPABILITY

4 8. Respondent does not admit the allegations in First Amended Accusation
5 No. 10-1994-36142, but does understand that by signing this stipulation he is enabling the
6 Division to issue the Order set forth below without further process.

7 RESERVATION

8 9. The admissions made by Respondent herein are only for the purposes of
9 this proceeding, or any other proceedings in which the Medical Board or other professional
10 licensing agency is involved, and shall not be admissible in any other criminal or civil
11 proceeding.

12 CONTINGENCY

13 11. The parties agree that this Stipulated Settlement and Disciplinary Order
14 shall be submitted to the Division for its consideration in this matter and, further, that the
15 Division shall have a reasonable period of time in which to consider and act on this Stipulated
16 Settlement and Disciplinary Order after receiving it.

17 12. The parties agree that this Stipulated Settlement and Disciplinary Order
18 shall be null and void and not binding on the parties unless approved and adopted by the
19 Division, except for this paragraph, which shall remain in full force and effect. Respondent fully
20 understands and agrees that in deciding whether to approve and adopt this Stipulated Settlement
21 and Disciplinary Order the Division may receive oral and written communications from its staff
22 and/or the Attorney General's Office. Communications pursuant to this paragraph shall not
23 disqualify the Division, any member thereof, and/or any other person from future participation in
24 this or any other matter affecting or involving respondent. In the event that the Division, in its
25 discretion, does not approve and adopt this Stipulated Settlement and Disciplinary Order, with
26 the exception of this paragraph, it shall not become effective, shall be of no evidentiary value
27 whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party
28 hereto. Respondent further agrees that should the Division reject this Stipulated Settlement and

1 Disciplinary Order for any reason, respondent will assert no claim that the Division, or any
2 member thereof was prejudiced by its/his/her review, discussion and/or consideration of this
3 Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

4 ADDITIONAL PROVISIONS

5 13. This Stipulated Settlement and Disciplinary Order is intended by the
6 parties herein to be an integrated writing representing the complete, final and exclusive
7 embodiment of the agreements of the parties in this matter.

8 14. The parties understand and agree that facsimile copies of this Stipulated
9 Settlement and Disciplinary Order, including facsimile signatures thereto, may be used in lieu of
10 original documents and signatures, and shall have the same force and effect as originals.

11 15. In consideration of the foregoing admissions and stipulations, the parties
12 agree that the Division of Medical Quality may, without further notice or formal proceeding,
13 issue and enter the following Disciplinary Order:

14 DISCIPLINARY ORDER

15 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No.
16 G43704 issued to Respondent Earl Melvin Simmons, M.D. is revoked; however, the revocation
17 is stayed and Respondent is placed on probation for three (3) years on the following terms and
18 conditions.

19 Within 15 days after the effective date of this decision respondent shall provide
20 the Division, or its designee, proof of service that respondent has served a true copy of this
21 decision on the Chief of Staff or the Chief Executive Officer at every hospital where privileges or
22 membership are extended to respondent or at any other facility where respondent engages in the
23 practice of medicine and on the Chief Executive Officer at every insurance carrier where
24 malpractice insurance coverage is extended to respondent.

25 1. PHYSICIAN ASSESSMENT AND CLINICAL EDUCATION
26 PROGRAM Within thirty (30) days from the effective date of this decision, respondent, at his
27 expense, shall enroll in the Physician Assessment and Clinical Education Program at the
28 University of California, San Diego School of Medicine (hereinafter the "PACE Program").

1 Enrollment shall mean complying with each and every administrative and financial precondition
2 that PACE has. If respondent fails to enroll within thirty (30) days from the effective date of this
3 decision, his license shall be automatically suspended. Respondent shall have an independent
4 obligation to successfully complete the PACE program within ninety (90) days of enrollment. If
5 respondent fails to successfully complete the PACE program enroll within ninety (90) days of
6 enrollment, his license shall be automatically suspended.

7 The PACE Program shall consist of a Comprehensive Assessment program
8 comprised of a two-day assessment of respondent's physical and mental health; basic clinical and
9 communication skills common to all clinicians; and medical knowledge, skill and judgment
10 pertaining to respondent's specialty or sub-specialty, and at minimum, a 40 hour program of
11 clinical education in the area of practice in which respondent was alleged to be deficient and
12 which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any
13 other information that the Division or its designee deems relevant. Respondent shall pay all
14 expenses associated with the clinical training program.

15 Based on respondent's performance and test results in the assessment and clinical
16 education, the Program will advise the Division or its designee of its recommendation(s) for the
17 scope and length of any additional educational or clinical training, treatment for any medical
18 condition, treatment for any psychological condition, or anything else affecting respondent's
19 practice of medicine. Respondent shall comply with Program recommendations.

20 At the completion of any additional educational or clinical training, respondent
21 shall submit to and pass an examination. The Program's determination whether or not
22 respondent passed the examination or successfully completed the Program shall be binding.

23 If respondent successfully completes the PACE Program, including the
24 examination referenced above, he agrees to cause the PACE Program representative to forward a
25 Certification of Successful Completion of the program to the Division or its designee. If
26 respondent fails to successfully complete the PACE Program within the time limits outlined
27 above, he shall be automatically suspended from the practice of medicine.

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1 Failure to participate in, and successfully complete all phases of the PACE
2 Program, as outlined above, shall constitute a violation of probation.

3 2. MONITORING Within thirty (30) days of the effective date of this
4 decision, respondent shall submit to the Division or its designee for its prior approval a plan of
5 practice in which respondent's practice shall be monitored by another physician in respondent's
6 field of practice, who shall provide periodic reports to the Division or its designee.

7 If the monitor resigns or is no longer available, respondent shall, within fifteen
8 (15) days, move to have a new monitor appointed, through nomination by respondent and
9 approval by the Division or its designee.

10 After two years of successful compliance with and satisfactory reports from the
11 monitoring program, Respondent shall be entitled to request revision of this term of probation.
12 The Division shall use its discretion in evaluating a revision request, but may not unreasonably
13 deny the request.

14 3. ADDITIONAL CONTINUING MEDICAL EDUCATION CREDITS
15 Respondent shall be required to take an additional 15 hours per year of Continuing Medical
16 Education (CME). Respondent shall provide proof of attendance for 40 hours of CME, per year.

17 4. SUPERVISION OF PHYSICIAN ASSISTANTS During probation,
18 respondent is prohibited from supervising physician assistants.

19 5. OBEY ALL LAWS Respondent shall obey all federal, state and local
20 laws, all rules governing the practice of medicine in California, and remain in full compliance
21 with any court ordered criminal probation, payments and other orders.

22 6. QUARTERLY REPORTS Respondent shall submit quarterly
23 declarations under penalty of perjury on forms provided by the Division, stating whether there
24 has been compliance with all the conditions of probation.

25 7. PROBATION SURVEILLANCE PROGRAM COMPLIANCE
26 Respondent shall comply with the Division's probation surveillance program. Respondent shall,
27 at all times, keep the Division informed of his business and residence addresses which shall both
28 serve as addresses of record. Changes of such addresses shall be immediately communicated in

1 writing to the Division. Under no circumstances shall a post office box serve as an address of
2 record, except as allowed by Business and Professions Code section 2021(b).

3 Respondent shall, at all times, maintain a current and renewed physician's and
4 surgeon's license.

5 Respondent shall also immediately inform the Division, in writing, of any travel
6 to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more
7 than thirty (30) days.

8 8. INTERVIEW WITH THE DIVISION, ITS DESIGNEE OR ITS
9 DESIGNATED PHYSICIAN(S) Respondent shall appear in person for interviews with the
10 Division, its designee or its designated physician(s) upon request at various intervals and with
11 reasonable notice.

12 9. TOLLING FOR OUT-OF-STATE PRACTICE, RESIDENCE OR IN-
13 STATE NON-PRACTICE In the event respondent should leave California to reside or to
14 practice outside the State or for any reason should respondent stop practicing medicine in
15 California, respondent shall notify the Division or its designee in writing within ten (10) days of
16 the dates of departure and return or the dates of non-practice within California. Non-practice is
17 defined as any period of time exceeding thirty (30) days in which respondent is not engaging in
18 any activities defined in Sections 2051 and 2052 of the Business and Professions Code. All time
19 spent in an intensive training program approved by the Division or its designee shall be
20 considered as time spent in the practice of medicine. A Board-ordered suspension of practice
21 shall not be considered as a period of non-practice. Periods of temporary or permanent residence
22 or practice outside California or of non-practice within California, as defined in this condition,
23 will not apply to the reduction of the probationary order.

24 10. COMPLETION OF PROBATION Upon successful completion of
25 probation, respondent's certificate shall be fully restored.

26 11. VIOLATION OF PROBATION If respondent violates probation in any
27 respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke
28 probation and carry out the disciplinary order that was stayed. If an accusation or petition to

1 revoke probation is filed against respondent during probation, the Division shall have continuing
2 jurisdiction until the matter is final, and the period of probation shall be extended until the matter
3 is final.

4 12 PROBATION COSTS Respondent shall pay the costs associated with
5 probation monitoring each and every year of probation, as designated by the Division, which are
6 currently set at \$2874, but may be adjusted on an annual basis. Such costs shall be payable to the
7 Division of Medical Quality and delivered to the designated probation surveillance monitor no
8 later than January 31 of each calendar year. Failure to pay costs within 30 days of the due date
9 shall constitute a violation of probation.

10 13. LICENSE SURRENDER Following the effective date of this decision, if
11 respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy
12 the terms and conditions of probation, respondent may voluntarily tender his certificate to the
13 Board. The Division reserves the right to evaluate the respondent's request and to exercise its
14 discretion whether to grant the request, or to take any other action deemed appropriate and
15 reasonable under the circumstances. Upon formal acceptance of the tendered license, respondent
16 will not longer be subject to the terms and conditions of probation.

17 Respondent fully understands and agrees that if he ever files an application for
18 licensure or a petition for reinstatement in the State of California, the Division shall treat it as a
19 petition for reinstatement. Respondent must comply with all the laws, regulations and
20 procedures for reinstatement of a revoked license in effect at the time the petition is filed.
21 Respondent further understands that the Division may, among other things, require further
22 training and testing in respondent's medical specialty; require a psychological and physical
23 examination by one or more physicians or psychologists; require continuing treatment for any
24 physical condition; and restrict or limit the scope of respondent's medical practice.

25 Prior to Respondent seeking reinstatement of his medical license, he must first
26 take and successfully complete, at his own expense, the Physician Assessment and Clinical
27 Education Program at the University of California, San Diego School of Medicine (hereinafter,
28 the "Pace Program"), which is described above. Respondent shall undertake whatever clinical

1 training and treatment of any medical or psychological condition as may be recommended by the
2 PACE Program.

3 At the completion of the PACE Program, Respondent shall submit to an
4 examination on its contents and substance. The examination shall be designed and administered
5 by the PACE faculty. Respondent shall not be deemed to have successfully completed the
6 program unless he passes the examination. Respondent agrees that the determination of the
7 PACE Program faculty as to whether or not he has passed the examination and/or successfully
8 completed the PACE Program shall be binding.

9 In addition, prior to Respondent seeking reinstatement of his medical license, he
10 must first take and successfully pass, at his own expense, the Special Purpose Examination
11 (SPEX).

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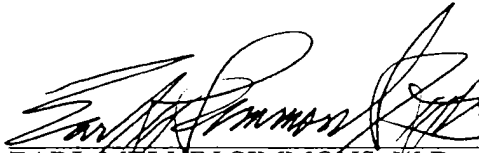
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1 ACCEPTANCE

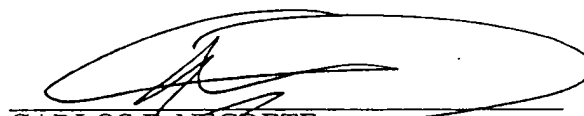
2 I have carefully read the above Stipulated Settlement and Disciplinary Order and
3 have fully discussed it with my attorney, Carlos F. Negrete. I understand the stipulation and the
4 effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated
5 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
6 bound by the Decision and Order of the Division of Medical Quality, Medical Board of
7 California.

8 DATED: 8/25/04

9 
10 EARL MELVIN SIMMONS, M.D.
11 Respondent

12 I have read and fully discussed with Respondent EARL MELVIN SIMMONS,
13 M.D., the terms and conditions and other matters contained in the above Stipulated Settlement
14 and Disciplinary Order. I approve its form and content.

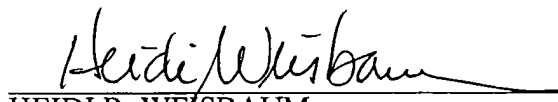
15 DATED: 8-25-04 LAW OFFICES OF CARLOS F. NEGRETE

16 
17 CARLOS F. NEGRETE
18 Attorney for Respondent
19

20 ENDORSEMENT

21 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
22 submitted for consideration by the Division of Medical Quality, Medical Board of California of
23 the Department of Consumer Affairs.

24 DATED: Aug. 25, 2004 BILL LOCKYER, Attorney General
25 of the State of California

26 
27 HEIDI R. WEISBAUM
28 Deputy Attorney General

Attorneys for Complainant

Exhibit A
First Amended Accusation

BILL LOCKYER, Attorney General
of the State of California
SAMUEL K. HAMMOND, State Bar No. 141135
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, California 92101
P.O. Box 85266
San Diego, California 92186-5266
Telephone: (619) 645-2083
Facsimile: (619) 645-2061

Attorneys for Complainant

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 10-1994-36142

EARL MELVIN SIMMONS, M.D.
267 N. El Camino Real, Ste. I
Encinitas, CA 92020

FIRST AMENDED
ACCUSATION

Physician's and Surgeon's
Certificate No. G 43704

Respondent

Complainant, Ron Joseph, as cause for disciplinary action alleges:

PARTIES

1. Complainant brings this First Amended Accusation solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On or about October 24, 1980, the Medical Board of California issued Physician's and Surgeon's Certificate No. G 43704 to Earl Melvin Simmons, M.D. ("Respondent"). The physician's and surgeon's certificate was in full force and effect at all times

1 relevant to the charges brought herein and expired on February 28, 2000 and has not been
2 renewed. On or about August 14, 1996, an Accusation was filed against respondent in Case No.
3 10-94-36142. To resolve the issues in Accusation No 10-94-36142, respondent signed a Two-
4 Step Agreement effective May 21, 1997, in which, among other things, respondent agreed to take
5 and pass the Special Purpose Examination (SPEX). To date, respondent has not passed the
6 SPEX.

7 JURISDICTION

8 3. This Accusation is brought before the Division of Medical Quality,
9 Medical Board of California ("Division"), under the authority of the following sections of the
10 Business and Professions Code ("Code").

11 A. Section 2227 of the Code provides that a licensee who is
12 found guilty under the Medical Practice Act may have his license revoked,
13 suspended for a period not to exceed one year, placed on probation and required to
14 pay the costs of probation monitoring, or such other action taken in relation to
15 discipline as the Division deems proper.

16 B. Section 2234 of the Code provides that unprofessional
17 conduct includes, but is not limited to, the following:

18 "....

19 (b) Gross negligence.

20 (c) Repeated negligent acts.

21 (d) Incompetence.

22 "...."

23 C. Section 2266 of the Code states that the failure of the
24 physician and surgeon to maintain adequate and accurate records relating to the
25 provision of services to their patients constitutes unprofessional conduct.

26 D. Section 118(b) of the Code provides: "The suspension,
27 expiration, or forfeiture by operation of law of a license issued by a board in the
28 department, or its suspension, forfeiture, or cancellation by order of the board or

1 by order of a court of law, or its surrender without the written consent of the
2 board, shall not, during any period in which it may be renewed, restored, reissued
3 or reinstated, deprive the board of the authority to institute or continue a
4 disciplinary proceeding against the licensee upon any ground provided by law or
5 to enter an order suspending or revoking the license or otherwise taking
6 disciplinary action against the licensee on any such ground."

7 E. Section 125.3 of the Code states, in pertinent part, that the
8 Board may request the administrative law judge to direct a licensee found to
9 have committed a violation or violations of the licensing act to pay a sum not to
10 exceed the reasonable costs of the investigation and enforcement of the case.

11 4. Section 14124.12 of the Welfare and Institutions Code provides, in
12 pertinent part, that: "Upon receipt of written notice from the Medical Board of California, the
13 Osteopathic Medical Board of California, or the Board of Dental Examiners of California, that a
14 licensee's license has been placed on probation as a result of a disciplinary action, the
15 Department may not reimburse any Medi-Cal claim for the type of surgical service or invasive
16 procedure that gave rise to the probation, including any dental surgery or invasive procedure, that
17 was performed by the licensee on or after the effective date of probation and until the termination
18 of all probationary terms and conditions or until the probationary period has ended, whichever
19 occurs first. This section shall apply except in any case in which the relevant licensing board
20 determines that compelling circumstances warrant the continued reimbursement during the
21 probationary period of any Medi-Cal claim, including any claim for dental services, as so
22 described. In such a case, the Department shall continue to reimburse the licensee for all
23 procedures, except for those invasive or surgical procedures for which the licensee was placed on
24 probation."

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1 CAUSES FOR DISCIPLINE

2 (Gross Negligence)

3 5. Respondent Earl Melvin Simmons, M.D., is subject to disciplinary action
4 under sections 2234(b), 2234(c) and 2234(d) in his care and treatment of patient Jackie G. on
5 account of the following:

6 A. Between January 13, 1986 and March 17, 1994, respondent
7 provided medical services to patient Jackie G. In June and July 1993, the patient
8 apparently complained of tremulousness, easy sweating, hyper-reactive reflexes,
9 visual blurring and mild to moderate systolic hypertension.¹ However, respondent
10 did not note any of these symptoms in the patient's chart.

11 B. On or about October 21, 1993, respondent noted the patient
12 was "Hyper-reflexic." Respondent ordered a "Thyroid Panel and SMAC 24."
13 There is no notation in the patient's chart that respondent examined the patient's
14 thyroid gland. The result of the thyroid panel showed TSH of 10.96 MIU/ml
15 (normal being from 0.302 to 5.00); and Free T4 of 0.9 ng/dl (normal being from
16 0.7 to 2.0). On or about October 25, 1993, respondent noted the patient had an
17 elevated TSH. He prescribed Propylthiouracil 50 mg., three times a day, for the
18 patient.

19 C. On the patient's next visit on or about November 4, 1993,
20 respondent ordered "Repeat T3 T4." The laboratory results reported on November
21 5, 1993, showed a TSH of 14.83 and a Free T4 to 0.8. Despite the patient's
22 worsening condition, respondent did not consult a specialist. Instead, respondent
23 maintained the Propylthiouracil therapy he had prescribed for the patient.

24 D. On November 29, 1993, the patient made another visit. On
25 this visit respondent ordered another thyroid panel which was reported on
26

27
28 1. This information comes from respondent's "Narrative Summary" of the treatment he
rendered to the patient. The summary is dated October 7, 1994.

1 December 2, 1993. The laboratory results showed a TSH of 24.74 and a Free T4
2 to 0.6. Despite the patient's worsening condition, respondent did not consult with
3 a specialist. Respondent maintained the propylthiouracil therapy he had
4 prescribed for the patient.

5 E. On December 13, 1993, the patient made another visit.
6 Respondent noted the patient had "lid edema." He ordered a reduction in the
7 propylthiouracil 50 mg. therapy, from three times a day to one a day.

8 6. Respondent Earl Melvin Simmons, M.D., is subject to disciplinary action
9 for unprofessional conduct in that he committed acts of gross negligence in violation of Code
10 section 2234(b) in his care and treatment of patient Jackie G. as follows:

11 A. Respondent failed to diagnose the patient's hypothyroidism.

12 B. Respondent failed to consult with a specialist in a timely
13 manner even though the results of the laboratory tests indicated a consistent
14 worsening in the patient's hypothyroidism.

15 C. Respondent prescribed propylthiouracil to a patient with
16 hypothyroidism.

17 D. Respondent continued propylthiouracil therapy in a patient
18 with hypothyroidism.

19 E. Respondent failed to perform a physical examination of the
20 patient's thyroid gland before arriving at a diagnosis of hyperthyroidism, or
21 alternatively, respondent failed to note in the patient's chart that he examined the
22 patient's thyroid gland.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Repeated Negligent Acts)**

25 7. Respondent Earl Melvin Simmons, M.D., is further subject to disciplinary
26 action under section 2234(c) of the Code in his care and treatment of patient Jackie G. as follows:

27 A. Respondent failed to diagnose the patient's hypothyroidism.

28 ///

1 B. Respondent failed to consult with a specialist in a timely
2 manner even though the results of the laboratory tests indicated a consistent
3 worsening in the patient's hypothyroidism.

4 C. Respondent prescribed propylthiouracil to a patient with
5 hypothyroidism.

6 D. Respondent continued propylthiouracil therapy in a patient
7 with hypothyroidism.

8 E. Respondent failed to perform a physical examination of the
9 patient's thyroid gland before arriving at a diagnosis of hyperthyroidism, or
10 alternatively, respondent failed to note in the patient's chart that he examined the
11 patient's thyroid gland.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Incompetence)**

14 7. Respondent Earl Melvin Simmons, M.D., is further subject to disciplinary
15 action under section 2234(d) of the Code in his care and treatment of patient Jackie G. as
16 follows:

17 A. Respondent failed to diagnose the patient's hypothyroidism.

18 B. Respondent failed to consult with a specialist in a timely
19 manner even though the results of the laboratory tests indicated a consistent
20 worsening in the patient's hypothyroidism.

21 C. Respondent prescribed propylthiouracil to a patient with
22 hypothyroidism.

23 D. Respondent continued propylthiouracil therapy in a patient
24 with hypothyroidism.

25 E. Respondent failed to perform a physical examination of the
26 patient's thyroid gland before arriving at a diagnosis of hyperthyroidism, or
27 alternatively, respondent failed to note in the patient's chart that he examined the
28 patient's thyroid gland.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to maintain adequate and accurate records)**

3 7. Respondent Earl Melvin Simmons, M.D., is further subject to disciplinary
4 action for unprofessional conduct in violation of Code section 2266 in that he failed to note the
5 patient's symptoms on the visits in June and July, 1993, and failed to note he examined the
6 patient's thyroid gland on the visit of October 21, 1993, as more particularly alleged in paragraph
7 5, above.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct)**

10 8. Respondent Earl Melvin Simmons, M.D., is further subject to disciplinary
11 action under section 2234 of the Code in his care and treatment of patient Jackie G. as follows:

12 A. On August 14, 1996, the Division filed Accusation No. 10-
13 94-36142 against respondent. On May 11, 1997, respondent entered into a "Two-
14 Step Agreement" with the Division to resolve the issues in Accusation No. 10-94-
15 36142. The Two-Step Agreement required respondent, among other things, to
16 take and pass the Special Purpose Examination (SPEX) within 90 days of May 21,
17 1997, the effective date of the Two-Step Agreement.

18 B. Respondent failed to take the SPEX within the allotted time
19 and when questioned respondent indicated he had vision problems that made it
20 impossible to study for the exam. Thereafter, respondent submitted an
21 ophthalmologist's report which indicated his vision was so bad that his continued
22 practice of medicine constituted a danger to the public. In about November 24,
23 1998, Accusation No. 10-98-91314 was filed against respondent charging
24 respondent with practicing medicine with impaired vision. On or about
25 November 25, 1998, a Petition for an Interim Suspension Order (ISO) was filed
26 against respondent alleging, among other things, that respondent's ocular problem
27 represented a physical illness affecting his competency to practice medicine, and
28 that his continued practice of medicine created a danger to the public. On

1 December 2, 1998, the petition for the ISO was granted. The ISO prohibited
2 respondent from performing any surgical procedure and from examining, treating
3 or prescribing to patients.

4 C. On September 13, 1999, the matter of the Accusation No.
5 10-98-91314 was heard. Respondent presented eye surgery reports and the report
6 of an optometrist which indicated his vision was back to normal. Based on this
7 evidence, the Division issued orders withdrawing Accusation No.10-1998-91314
8 and terminating the ISO. The orders became effective October 12, 1999, and
9 respondent was granted 90 days from this date to take and pass the SPEX.

10 D. In a letter dated January 12, 2000, counsel for respondent
11 requested an extension of the date on which respondent must take and pass the
12 SPEX. Counsel requested the date be extended to June 12, 2000. The reason
13 given was that respondent had been diagnosed with prostate and bladder cancer
14 and was undergoing aggressive chemotherapy. The Division granted an extension
15 until July 1, 2000, for respondent to take and pass the SPEX. In a letter dated
16 June 7, 2000, respondent's physician requested another extension of time for
17 respondent to take and pass the SPEX. The reason given was that respondent was
18 scheduled for radical prostate surgery on July 12, 2000. The Division granted
19 respondent until November 1, 2000 to take and pass the SPEX. In a letter dated
20 October 19, 2000, counsel for respondent requested further extension of the date
21 on which respondent must take and pass the SPEX. The reason given was that the
22 pain medications respondent was taking had made it difficult for respondent to
23 prepare adequately to take the SPEX. The Division granted until February 1,
24 2001, for respondent to take and pass the SPEX. In a letter dated January 30,
25 2001, counsel for respondent again requested further extension of the date on
26 which respondent must take and pass the SPEX. The reason given was that
27 respondent had been unable to prepare for the SPEX because, among other things,
28 a rise in respondent's PSA titre has lead to further cancer medication. The

1 Division extended the date to June 1, 2001. In a letter dated May 31, 2001,
2 counsel for respondent again requested further extension of the date on which
3 respondent must take and pass the SPEX. The reason given was that respondent
4 had medical problems affecting his eyes. Counsel attached a letter from
5 respondent's ophthalmologist indicating respondent had been diagnosed with
6 "right maculopathy which interferes with his central visual acuity and limits his
7 binocularity."

8 E. Thereafter, the Board sought information on the state of
9 respondent's medical practice. Specifically, the Board wanted assurance that
10 respondent was not engaging in the practice of medicine while his ocular problem
11 existed. Respondent has failed to respond to the Board's request. To date,
12 respondent has failed to take and pass the SPEX.

13 9. Respondent Earl Melvin Simmons, M.D., is further subject to disciplinary
14 action for unprofessional conduct in that he failed to take and pass the SPEX in breach of the
15 terms of the Two-Step Agreement he entered into with the Board as more particularly alleged in
16 paragraph 8, above.

17 PRAYER

18 WHEREFORE, complainant requests that the Division hold a hearing on the
19 matters alleged herein, and that following said hearing, the Division issue a decision:

- 20 1. Revoking or suspending Physician's and Surgeon's Certificate No.
21 G 43704, heretofore issued to respondent Earl Melvin Simmons, M.D.;
- 22 2. Revoking, suspending or denying respondent approval authority to
23 supervise physician's assistants pursuant to Code section 3527;
- 24 3. Ordering respondent to pay the Medical Board of California the reasonable
25 costs of the investigation and enforcement of this case, and, if placed on probation, the costs of
26 probation monitoring; and

27 ///

28 ///

1 4. Taking such other and further action as the Medical Board of California
2 deems necessary and proper.

3
4
5 DATED: April 15, 2002

6 

7 _____
8 RON JOSEPH
9 Executive Director
10 Medical Board of California
11 Department of Consumer Affairs
12 State of California
13 Complainant

EXHIBIT B

SUSPENSION ORDER

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:)

EARL MELVIN SIMMONS, M.D.)

Case No. 10-1994-36142

Physician's and Surgeon's)

Certificate No. G 43704)

Respondent.)

SUSPENSION ORDER

In the Medical Board of California ("Board") Case No. 10-1994-36142, the Board through the Division of Medical Quality ("Division"), issued a Decision and Order adopting a Stipulated Settlement and Disciplinary Order which became effective October 25, 2004. In the Board's order, Physician's and Surgeon's Certification No. G 43704, issued to Earl Melvin Simmons, M.D., was ordered revoked, revocation stayed and Respondent was placed on probation for three years with terms and conditions.

Probation condition No. 1 requires Respondent, within 30 days from the effective date of the decision, to enroll in the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine ("PACE Program"). Respondent was also required to complete the PACE Program within 90 days after his initial enrollment. Condition No. 1 provides that, "If Respondent fails to successfully complete the PACE Program within the time limits outlined above, he shall be automatically suspended from the practice of medicine."

Respondent has failed to enroll in and successfully complete the PACE Program as mandated in the above Decision and Order, and accordingly, the certificate to practice medicine No. G 43704 issued to Earl Melvin Simmons, M.D. is suspended. Respondent shall remain suspended from the practice of medicine until Respondent successfully completes the PACE Program, as evidenced by written notice to Respondent from the Division or its designee.

IT IS SO ORDERED March 2, 2005.

By: _____

JOAN JERZAK

Chief of Enforcement